IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Ex.FA.No. 28 of 2006()

AGAINST THE ORDER DATED 17/03/2006 IN EA.189/90 IN EP.74/89 IN OS.112/1984 of PRL.SUB JUDGE,THALASSERY

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APPELLANTS/LEGAL HEIRS OF CLAIM PETITIONER:

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1. PALERI NANI, D/O. KELAN,
   MAROLI HOUSE, P.O. TEMPLE GATE, THALASSERY.

2. N.P. SOBHANA, W/O.PAVITHRAN,
   MAROLI HOUSE, P.O. TEMPLE GATE, THALASSERY.

BY ADV. SRI.A.SUDHI VASUDEVAN

RESPONDENTS: RESPONDENTS/DECREE HOLDER/LHRS.OF DECEASED J.D.

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1. ALINGA PARAMBATH BALAN, S/O. BABAN,
   TELLICHERRY AMSOM, VADIKKAKAM DESOM (DH).

2. PADMAVATHI @ PAPPI, D/O.LATE ACHUTHAN,
   MAROLI HOUSE, KODIYERI AMSOM, TEMPLE GATE,
   THALASSERY.

R1 BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.
SMT.SANJANA R.NAIR

THIS EXECUTION FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

Ex.F.A.No.28 of 2006

Dated, this the 22nd day of October, 2007

JUDGMENT

The claimants in E.A.No.189/1990 in E.P.No.74/1989 in O.S.No.112/1984 on the file of the Subordinate Judge's Court, Thalassery are the appellants.

2. Appeal is filed against an order passed by the learned Subordinate Judge dismissing a petition filed by the appellants under Order XXI Rule 58 of Civil Procedure Code claiming independent title over the property scheduled in the plaint. First respondent decree holder filed O.S.No.112/1984 against the decreased second respondent and obtained a decree for money. Subsequently the decree holder filed E.P. No.74/1989 for realisation of the decree debt by attachment and sale of petition scheduled property. The same was attached on 16.2.1990. Deceased first claim petitioner who was the son of the original judgment debtor filed a petition under Order XXI Rule 58 of CPC contending that he is the owner of property and on the date of attachment the judgment debtor had no title or possession over the plaint schedule property. It was contended that original judgment debtor gifted the properties to the original claim petitioner on 23.7.1984 and on that day there was no attachment subsisting. It was also contended that the donor had other properties also and the donee had accepted the gift. It was also contended that the petition schedule property was outstanding on mortgage with the Co-operative Town Bank, Thalassery as security and the original claim

petitioner discharged the debt and for that consideration a 'dhananischayadharam' was executed in favour of the original claim petitioner. During the pendency of the proceedings the original claim petitioner died and appellants were impleaded as the legal representatives of the deceased claim petitioner.

3. The decree holder contended that he obtained a decree against the deceased defendant (judgment debtor) and he was entitled to get Rs.83,233/-. It was also contended that the decree holder filed the suit against the deceased defendant on 20.6.1984 and defendant executed the gift deed in favour of the original claim petitioner on 23.7.1984 with the knowledge of filing of the suit. It was contended that the gift deed was executed with the intention to delay the execution of the decree obtained by the decree holder. Initially the executing court allowed the claim petition. Challenging that order the decree holder filed E.F.A.No.9/1992 before this Court and this Court by judgment dated 28.6.2003 set aside the order passed by the executing court and remanded the matter for fresh consideration. Executing court was directed to consider two questions, viz., (1) whether the donee is a universal donee liable to discharge the debt to the extent of property gifted to him? and (2) whether the gift deed is a fraudulent transaction?. After a detailed enquiry the executing court found that donee had discharged the debt due to the Co-operative Bank and he was not a universal donee. But it was found that the decree holder was doing partnership business along with the deceased defendant. The partnership was dissolved and the suit was filed for the

amount due to the decree holder at the time of dissolution of the firm. Executing court found that there was every reason to believe that gift deed was executed by the original judgment debtor in favour of his son with the knowledge of filing of the suit. I do not find any reason to take a different view. Gift deed was executed to defeat the interest of the decree holder. Executing court had given very cogent reasons for holding that the gift deed executed by the judgment debtor is a fraudulent transaction. I do not find any reason to interfere with that finding of fact based on good evidence. No merit in the appeal. It is only to be dismissed.

In the result, appeal is dismissed.

I.A.No.1856/2006 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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